Before the
Federal Communications Commission
Washington, D. C. 20554

In the Matter of	)	
Amendments of Parts 73 and 74	)	
of the Commission's Rules	)	
To Permit Certain Minor Changes in Broadcast	)	MM Docket 96-58
Facilities Without a Construction Permit	)	

PETITION FOR RECONSIDERATION AND REVIEW

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Introduction

While the majority of the actions taken by the Commission in this proceeding are laudable, in that they simplify and clarify many of the minor matters involving facilities changes for broadcast stations, in at least three areas the Commission has adopted positions which are untenable, impractical, unreasonable, and possibly illegal.

Federal Aviation Agency "Determinations of No Hazard to Air Navigation"

In footnote 5, page 8, the Commission states that "If the Federal Aviation Administration ("FAA") has issued a determination limiting the ERP of the station to a specific value due to electromagnetic interference (EMI) concerns, the licensee or permittee must obtain a new written determination of no hazard from that agency for the proposed power level *prior* to implementing the power increase and filing the license application with the FCC." A similar statement is contained in footnote 21, page 16, relative to television applications. This appears to be a wholly novel concept, not previously elucidated in any rulemaking action or written staff policy determination.

The Commission's concern in instances where FAA has previously issued an analysis of potential electromagnetic incompatibility is understandable, but the procedure it seeks to adopt is very troublesome. In general, the FCC has never conceded authority to FAA over matters of electromagnetic compatibility, and has even granted facility applications in the face of FAA objections.

The FAA does not have jurisdiction over matters of electromagnetic compatibility. Indeed, the FAA lacks the characteristics of an expert agency in such determination. The "EMC" standards used by FAA in its questionable analysis process have not been subjected to the review required under the Administrative Procedure Act (APA), and there is no avenue of

argument or appeal of FAA actions based on these standards, since they are, in terms of procedure, "informal." FAA personnel who conduct them are not necessarily technical experts, and in some cases FAA has contracted with private contractors whose personnel were, in a technical sense, totally incompetent to conduct reviews using its standards. Further, the standards adopted by FAA are inconsistent with those adopted internationally and by the competent agencies of other national administrations, such as those of the EU member countries and of Canada. In the past FAA personnel have ignored the existence of valid pending authorizations in their analysis of potential interference, made technically unsupported and perhaps even fabricated allegations of interference from operating facilities, objected to physical construction on re-radiation premises that were not based on any mathematical analysis, violated the requirements of the agency's own procedures, and assumed that harmonics of AM broadcast stations are only 80 dB suppressed at the 100th harmonic. Reliance on any interference determination by FAA personnel must be subjected to the same rigorous analysis by FCC and any other interested parties that such allegations would be tested by if they came from any other concerned party. Simply stated, FAA is not an expert agency in matters involving telecommunications or radio physics, and its allegations cannot be allowed as prima facie in any fair or reasonable administrative proceeding.

Unless the FCC adopts, by a process consistent with the requirements of APA, an avenue of appeal of FAA determinations regarding electromagnetic compatibility, then FAA should be accorded no status different from any other potentially aggrieved party. FAA can object on any substantial grounds it can prove to a pending application, or to a grant of construction permit or license, but any a priori accordance by FCC to FAA of specific expertise or any expert standing is simply an outrage.

Continuation of Protection to AM Stations

At paragraphs 47 - 50, the Commission discusses adoption of a new rule, 47 CFR 73.1692. This rule, while relatively consistent with the Mass Media Bureau's policy over the past 15 or 20 years, is inconsistent with the rule adopted in for public land mobile service licensees, §22.371.

It is poor policy for the Commission to have inconsistent rules for physical circumstances that are indistinguishable. The Mass Media Bureau policy that this new rule is supposed to replace had at least the virtue of being a policy, and therefore in cases where it was totally inappropriate didn't require a rule waiver, but merely an informal staff determination. In any event, the rule is overkill.

Very few cases of new tower construction nearby to AM antenna systems actually result in re-radiation values which are of sufficient magnitude to distort the AM antenna patterns to the point of noncompliance with the Commission's technical standards. For such antenna systems to actually produce substantial re-radiation, they must be of substantial height, and must be quite close to the AM antenna system. Even when such re-radiation effect can be measured in the vicinity of the re-radiating tower structure, the far field radiation pattern of the AM station is nearly always not substantially affected. The use of modern techniques based on numerical analysis, such as moment method models, can be used to definitively

demonstrate that the "worst case" potential re-radiating effect of a proposed new or modified structure cannot possibly affect an AM antenna pattern. Such analysis should be accepted by the rule, even if only implicitly. In other regards, the rule adopted by the Common carrier Bureau is sufficiently flexible to warrant its adoption by the Mass Media Bureau in place of that adopted in this proceeding as 47CFR73.1692. To adopt such totally inconsistent rules for essentially indistinguishable situations is unacceptable, even were some administrative convenience to be furthered by such an intellectually bankrupt practice.

Alternative Propagation Calculations in FM Channel Allotment Rulemaking Proceedings

At footnote 52 of the Report & Order the Commission states "The staff examined past allotment rulemaking proceedings in which the use of supplemental showings was considered in a rulemaking proceeding, but was unable to find any proceeding in which a supplemental showing was accepted and an allotment created which located the 70 dBu contour beyond the location predicted by the standard contour prediction method." This statement is true. It is also totally inadequate justification for the judgment made in paragraph 70 of the R&O. The footnote goes on to state "Thus no precedent exists for such usage." This statement is not true.

The statement is not true because a case exists in which the Commission specifically accepted such showings, but denied the allotment only because the proponent's analysis was flawed and not because the use of the method was not allowed. An historical analysis of the circumstances makes this situation very clear.

In the Notice of Proposed Rulemaking in MM Docket 92-159 (73RR2d247), the "one-step" rulemaking, at footnote 9 there is a reference to the *allotment* standards for suitable demonstration of 70 dBu principal community coverage for the FM service. The reference, however, is misstated to be the Memorandum Opinion & Order in *Woodstock & Broadway, VA* 2 FCC Rcd 7064. The disposition of the Woodstock allotment matter is actually shown in the Memorandum Opinion & Order of the full Commission, 3 FCC Rcd 6398, and as acted on by the staff subsequent to the Commission's Order in the Notice of Proposed Rulemaking and Order to Show Cause 3 FCC Rcd 6512.

In *Woodstock* the Commission held that in the "narrowly limited exception" where an upgrade allotment is proposed and where competing applications are foreclosed, a showing using the specific topographic relationship of the site proposed and the community of license, demonstrating compliance with the principal community coverage requirements of the rules, would be acceptable in the rulemaking context. As the footnote states "there are instances in which a rulemaking petitioner may wish to file a detailed engineering showing." Such a showing must meet certain requirement, which are outlined in the *Woodstock* decision. The Woodstock standards were subsequently emphasized in the Report & Order in MM Docket 91-58 (Caldwell, College Station, & Gause, TX), DA 95-1433, at footnotes 10 and 11.

The use of specific topographically related propagation calculations based on free-space minus loss analysis, as described in various papers by Longley, Rice, et al, and by Bullington and others, often misleadingly referred to as "Tech Note 101" calculations, has been accepted in many instances by the Policy and Rules Division for FM allotment analysis purposes. The

earliest outline of the standards required for acceptance of this type of showing is believed to be the Memorandum Opinion and Order in MM Docket 87-589 (Creswell, OR). Essentially, the requirements are the same as those in application cases.

In the Report & Order in MM Docket 89-108 (Sonora, CA) 6 FCC Rcd 6042, the staff considered an allotment request and *specifically* accepted showings by the proponent and by an objector which were generated using free-space minus obstruction loss calculations of the type employed in Longley-Rice or Tech Note 101 analysis. Although the proponent's analysis was flawed and the allotment request denied, the denial was explicitly based on the inadequacy of the proponent's coverage showing, not on the use of the "supplemental showing" method. This clearly shows that had a correctly employed "supplemental showing" that the coverage requirement was met been provided, it would have been accepted. There is nothing in the Docket 89-108 Report & Order which could be construed as limiting the acceptability of a technically correct showing of this type in a channel allotment context.

Thus the bald statement contained in footnote 52 is correct only as to specific outcomes of previous cases, and not as to the underlying principle. Further, since the Commission has accepted "supplemental showing" analyses to deny channel allotments, where they show the "standard contour prediction method" is inadequate or incorrect, it is constrained to accept such analyses in cases where they show compliance. And indeed, the Commission has consistently done so in application cases. It is an administrative due process violation to have two different standards of proof for different cases, dependent upon which outcome is achieved.

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